Re Amran bin Ahmad; ex p MBf Finance Bhd

HIGH COURT (MUAR) — BANKRUPTCY NO 29–1076 OF 2002
JEFFREY TAN J
29 MARCH 2005

Bankruptcy — Adjudication and receiving orders — Setting aside — Motion to set aside order — Whether not served or not properly served — Whether mistake in new identity card number due to typographical errors — Whether any injustice was caused by those typographical errors — Change of name of judgment creditor — Whether any injustice was caused by failure to cite new name of judgment creditor

This was the judgment debtor's ('JD') appeal against the order of the senior assistant registrar dismissing the JD's application to set aside the receiving order and adjudication order ('ROAO'). The judgment creditor ('JC') obtained a default judgment against the JD. The JD attempted but failed to set aside the said default judgment. The JD was served with the bankruptcy notice ('BN') and the creditor's petition ('CP'). The JD was adjudged a bankrupt. It was argued that the CP was not served or not properly served. The identity card number stated in the affidavit of service was not that of the JD. Later, MBf had changed its name to Am Finance. Am Finance was vested with the assets of Arab Malaysian Finance Bhd. When the BN was issued, MBf Finance was no longer in existence.

Held, dismissing the appeal with costs:

(1) For the far greater part of the documents filed by the JC, the identity card number of the JD was correctly stated. Given so, it should be apparent that the omission of the new identity card number and the mistake in the new identity card number would have been due to typographical errors. In any case, it would not even remotely appear that any injustice was caused by those typographical errors (see para 5).

(2) No injustice was caused by the failure to cite the new name of the JC. That would mean that the change of name of the JC from MBf Finance Bhd to Am Finance Bhd would not change the identity of the JC. MBf Finance Bhd continued to exist, albeit under a new name. In reality if not in name by reason of the change of name, employees of MBf Finance Bhd continued to be employees of MBf Finance Bhd (see para 6).

(3) No injustice could have been caused by the omission of the new name in the documents filed after the change of name. If at all, it could be said that the continued use of the old name only ensured that the JD would not be confused by the identity of the petitioning creditor but would know that the petitioning creditor was the same judgment creditor (see para 7).

[**Bahasa Malaysia summary**

Ini adalah rayuan penghutang penghakiman ('JD') terhadap perintah penolong kanan pendaftar yang menolak permohonan JD untuk mengetepikan perintah penerimaan dan penghakiman ('ROAO'). Pemiutang penghakiman ('JC') telah mendapat satu penghakiman ingkar terhadap JD. JD cuba tetapi telah gagal mengetepikan penghakiman ingkar itu. JD disampaikan dengan notis kebankrapan ('BN') dan petisyen pemiutang itu ('CP'). JD diperintahkan bankrap. Adalah dituntut bahawa CP tidak disampaikan atau tidak disampaikan dengan betul. Nombor kad pengenalan yang tercatat dalam afidavit penyampaian bukan kepunyaan JD. Kemudian, MBf telah tukar nama kepada Am Finance. Am Finance diberi milik aset Arab Malaysian Finance Bhd. Apabila BN diisukan, MBf Finance tidak lagi wujud.

Diputuskan, menolak rayuan dengan kos:

(1) Untuk sebahagian besar dokumen-dokumen yang difailkan oleh JC, nombor kad pengenalan JD dinyatakan dengan betul. Oleh itu, ia sepatutnya jelas bahawa ketidaknyataan nombor kad pengenalan baru dan kesalahan dalam nombor kad pengenalan baru adalah kesilapan menaip. Dalam apa keadaan pun, tidak ada sebarang ketidakadilan yang disebabkan oleh kesilapan menaip itu (lihat perenggan 5).

(2) Tidak ada ketidakadilan yang disebabkan oleh kegagalan menyatakan nama baru JC. Ini bermaksud pertukaran nama JC daripada MBf Finance Bhd kepada Am Finance Bhd tidak menukar identiti JC. MBf Finance Bhd terus wujud, tetapi di bawah nama yang baru. Kenyataan adalah sekiranya bukan sebab pertukaran nama, pekerja-pekerja MBf Finance masih adalah pekerja-pekerja MBf Finance Bhd (lihat perenggan 6)

(3) Tiada ketidakadilan disebabkan oleh ketidaknyataan nama baru dalam dokumen-dokumen yang difailkan selepas pertukaran nama. Sekiranya ada, ia boleh dikatakan bahawa penggunaan nama yang lama hanya memastikan JD tidak dikelirukan dengan identiti pemiutang pempetisyen tetapi tahu bahawa pemiutang pempetisyen adalah pemiutang penghakiman yang sama (lihat perenggan 7).]

Notes

For a cases on setting aside adjudication and receiving orders, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2007.

Cases referred to

Hamidah bte Abd Hamid & Anor v Polynesia Offshore Supplies (B) Bhd [1990] 3 MLJ 94 (refd)

Leong Moh Sawmill Co Sdn Bhd (In liquidation v Standard Chartered Bank & Ors [1996] 2 MLJ 614 (refd)

MBf Finance Bhd v Tina Kah Kuong [1993] 3 MLJ 73 (refd)
Megnaway Enterprise Sdn Bhd v Soon Lian Hock [2002] MLJU 433 (refd)
Perkayuan OKS (No 2) Sdn Bhd v Kelantan State Economic Development Corp [1995] 1 MLJ 401 (refd)
Solid H Gold Engineering Works, Re; ex p the Official Assignee [1988] 3 MLJ 456 (refd)

Legislation referred to

Bankruptcy Act 1967 s 131
Bankruptcy Rules 1969 r 9(1)
Companies Act 1965 ss 23, 23(6), 121(1A)

Munawira bte Mohamad (Abdul Rahman Saad & Associates) for the judgment creditor.
Ng Aik Beng (AB Ng & Associates) for the judgment debtor.

Jeffrey Tan J:

[1] This is the judgment debtor's ('JD') appeal to judge-in-chambers (encl 47) against the order of the learned senior assistant registrar ('SRA') dated 24 August 2004 dismissing the judgment debtor's application (encl 38) to set aside the receiving order and adjudication order ('ROAO') dated 20 April 2004.

[2] The following are not in dispute. On 15 January 1998, in Malacca sessions court 52–741 of 1997, the judgment creditor ('JC') obtained default judgment in the sum of RM193,551.98 against the JD, which default judgment with accrued interest amounted to RM291,422.11 on 19 September 2002. The JD attempted but failed to set aside the said default judgment. On 15 April 2003, the JD was served with the instant bankruptcy notice ('BN'). On 9 April 2004, the JD was served with the instant creditor's petition ('CP') filed on 29August 2003. On 20 April 2004, the JD was adjudged a bankrupt.

[3] Mr AB Ng for the JD argued that the CP was not served, not properly served. The identity card number stated in the affidavit of service was not that of the JD. The name was correct, but not the identity card number. The identity card number should be 650301–08–7141. A0034106 was the correct identity card number, but it was the old identity card number. The same wrong identity card number was stated in the draft ROAO. The identity card number stated in the BN was correct, but the request for the BN did not state the new identity card number. The identity card number is a requirement of Form 1. On 3 April 2002, MBf had changed its name to Am Finance (see encl 40 exh NEM1). On 21 May 2002, Am Finance was vested with the assets of Arab Malaysian Finance Bhd (see encl 40 exh NEM3). When BN was issued on 19 September 2002, MBf Finance was no longer in existence. In *MBf Finance Bhd v Tina Kah Kuong* [1993] 3 MLJ 73, the court held that all proceedings could commence under the new name. Section 121(1A) of the Companies Act 1965 requires the former name to be used together the new name for 12 months

from the date of change of name. Section 23(6) of the Companies Act 1965 only applies to pending suits. The person who attested the CP was no longer an authorised person, as he was no longer an MBf officer. The JD had informed the JC of his new address (counsel referred to encl 37 exh AA–7). That notification was acknowledged. On 18 February 2002, the JC had used the new address. Service was affected on the old address despite the notification in AA–7 dated 14 February 2000. No amendment could be made to validate the ROAO (counsel referred to *Re Solid H Gold Engineering Works, ex p the Official Assignee* [1988] 3 MLJ 456, and *Hamidah bte Abd Hamid & Anor v Polynesia Offshore Supplies (B) Bhd* [1990] 3 MLJ 94).

[4] Munawira bte Mohamad answered that the JC had not received the said notification of the new address. The so-called letter of acknowledgement dated 18 February 2002 was that of Arab Malaysian Finance Bhd, then a separate legal entity, and not that of the JC, and that letter concerned a different account. It was agreed that the address for service shall be the address stated in the guarantee (counsel tendered the pertinent appeal record in Malacca 12–21 of 2000). The old identity card number was a typographical error, and the JD was not prejudiced by that mistake. A change of name would not affect the proceedings. There was no need to change the particulars of the JC (counsel referred to *Leong Moh Sawmill Co Sdn Bhd (In liquidation v Standard Chartered Bank & Ors* [1996] 2 MLJ 614). Technical objections should be disregarded (counsel referred to *Megnaway Enterprise Sdn Bhd v Soon Lian Hock* [2002] MLJU 433).

[5] Rule 9(1) of the Bankruptcy Rules 1969 provides that 'every proceeding in a bankruptcy matter shall be dated and shall with necessary additions, be intituled as in Form 1'. Form 1, as amended by PU(A) 60/93, calls for the insertion of the name and identity card number of the debtor. The correct identity number of the JD is 650301 –08–7141 (see encl 37 exh AA–3). But that identity card number was not stated and or was not correctly stated in two documents filed by the JC; in the form of request for the issuance of the BN (encl 2) only the old identity card number was stated, and in the affidavit of posting of the CP (encl 30) the old identity card number was correctly stated but the new identity card was incorrectly stated as 650310–087141 (the underlined being the mistake) instead of 650301–08–7141. But otherwise, that new identity card number (650301–08–7141) was correctly stated all other documents, namely, in the BN (encl 3), in summons-in-chambers dated 2 December 2002 (encl 7), in the affidavit (encl 6) supporting encl 7, in the form of notice of advertisement of the BN (encl 12), in the affidavit of advertisement and posting of the BN (encl 14), in the CP (encl 17), in summons-in-chamber dated 2 January 2004 (encl 21), in the affidavit (encl 20) supporting encl 21, in the order dated 10 February 2004 (encl 25), in the form of notice of advertisement of the CP (encl 26), in the affidavit of posting of the CP (encl 29), and, in the receiving order and adjudication order (encl 45). As a matter of fact, both the old and new identity card numbers (A0034106 and 650301–08–7141)

were stated and correctly stated in the aforesaid encls 3, 6, 7, 12, 14, 17, 20, 21, 25, 26, 29, and 45. In other words, for the far greater part of the documents filed by the JC, the identity card number of the JD was correctly stated. Given so, it should be apparent that the omission of the new identity card number in encl 2 and the mistake in the new identity card number in encl 30 would have been due to typographical errors. In any case, it would not even remotely appear that any injustice was caused by those typographical errors. Enclosure 2 was annexed together with encl 3, where the new identity card number was correctly stated. In both encls 2 and 3, the old identity car number was correctly stated. The old identity card was an old identity card number, but it belonged nevertheless to the JD, Hence, the JD should know that the encls 2 and 3 concerned him and him alone. The old identity card number was correctly stated in encl 30, and similarly the JD should know that encl 30 concerned him and him alone. As said, no injustice was caused by those typographical errors.

[6] Also, no injustice was caused by the failure to cite the new name of the JC in the documents filed after 3 April 2002. Section 23(6) of the Companies Act 1965 provides that 'a change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name'. That would mean that the change of name of the JC from MBf Finance Berhad to Am Finance Berhad would not change the identity of the JC. 'The change in name ... does not affect the entity of the company' (*Perkayuan OKS (No 2) Sdn Bhd v Kelantan State Economic Development Corp* [1995] 1 MLJ 401 per Lamin FCJ, as he then was). MBf Finance Berhad continued to exist, albeit under a new name. In reality if not in name by reason of the change of name, employees of MBf Finance Berhad continued to be employees of MBf Finance Berhad. Hence, there was no merit in the argument that MBf Finance was no longer in existence on the day (19 September 2002) that the BN was issued, and that the officer who attested the CP was no longer an officer of MBf Finance Berhad.

[7] Section 121(1A) of the Companies Act 1965 stipulates that 'where a company has changed it name pursuant to s 23, the former name of the company shall also appear beneath its present name on all documents … for a period of not less than 12 months from the date of change, and if default is made in complying with this subsection the company shall be guilty of an offence against this Act'. The JC had not complied with the said s 121(1A). The JC had not cited its new name in the documents filed after its change of name. But that offence, which was not a defect or irregularity, could not invalidate this proceeding in bankruptcy. In any event, s 131 of the Bankruptcy Act 1967 provides that 'no proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection

is made to the proceeding is of the opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court'. And in the opinion of this court, no injustice could have been caused by the omission of the new name in the documents filed after the change of name. If at all, it could be said that the continued use of the old name only ensured that the JD would not be confused by the identity of the petitioning creditor but would know that the petitioning creditor was the same judgment creditor.

[8] The final argument by counsel for the JD was that the JD had notified the JC of his change of address and that the JC had duly acknowledged the change of address. Learned counsel for the JD referred to encl 37 exh AA–7, in particular, to the letter dated 14 February 2000 which allegedly had notified the JC that the principal borrower, Amran Ahmad Transportation Sdn Bhd, and its directors had changed their respective addresses of business and residence to 17, Jalan USJ 16/3E, 47630 Subang Jaya, Selangor. Learned counsel for the JC referred however to the guarantee which provided that any 'demand … shall be validly made if served on me/us personally or sent to me/us by prepaid ordinary post to or left at my/our address stated below … or that last known to you …' , and the given address of the JD in the said guarantee was 8 Jalan Tanjung 2, Taman Sri Tanjung Indah, Tanjung Agas, 84000 Muar, Johor, the same as the address stated in the BN and CP. First and foremost, let it be said that that letter dated 14 February 2000 was that of the principal borrower and not that of the JD. And the letter dated 18 February 2002 which allegedly had acknowledged the notification of the change of address was that of the Arab-Malaysian Finance Bhd and in respect of different loan accounts, and not that of the JC. In fact, strictly speaking, there was no notification from the JD himself that he had changed his address. Given so, the JC could not be expected to act on the letter dated 14 February 2000. Given the uncertainty, where there had not been any notification from the JD himself that he had changed his address, the JC had no other course but to resort to the contractual address as the address for service.

[9] For the above reasons, this appeal to judge-in-chambers is dismissed with costs.

Appeal dismissed with costs.

Reported by Peter Ling